

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

EUGENE BURCHETT,)	
)	
Petitioner,)	
)	
-vs-)	Case No. CIV-18-32-F
)	
WARDEN BEAR, et al.,)	
)	
Respondent.)	

ORDER

On February 8, 2018, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation, recommending that petitioner, Eugene Burchett’s petition for a writ of habeas corpus under 28 U.S.C. § 2241 be summarily dismissed without prejudice.

Presently before the court is petitioner’s objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court concurs with the analysis of Magistrate Judge Erwin. The court finds petitioner’s arguments to be without merit. In addition, the court finds that petitioner is not entitled to a hearing. Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge *must* dismiss the petition. . . .” *Id.* (emphasis added); *see also*, Rule 1(b) of the Rules Governing Section 2254 Cases in the United States District Courts (“The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).”) The court agrees with Magistrate Judge Erwin that it plain from the

petition that petitioner is not entitled to relief. Thus, pursuant to Rule 4, the court must dismiss the petition rather than grant a hearing.

Under Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, a “district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” In order to obtain a certificate of appealability, petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Petitioner “satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-el v. Cockrell, 537 U.S. 322, 327 (2003). After considering the record, the court concludes that petitioner cannot make the required showing. Therefore, the court concludes that a certificate of appealability should be denied.

Based upon the foregoing, the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on February 8, 2018 (doc. no. 8) is **ACCEPTED, ADOPTED and AFFIRMED**. Petitioner, Eugene Burchett’s petition for a writ of habeas corpus under 28 U.S.C. § 2241 is summarily **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is **DENIED**.

IT IS SO ORDERED this 25th day of February, 2018.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE